"ACQUISITION UPDATE"

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Acquisition Update

CHANGES ARE COMING OUT FASTER

(1) Contractors on the Battlefield

(2) Bundling/Consolidation

(3) Provisional Award Fee Payments (DoD)

(4) Overpayment Rules

(5) Sole Source Authority for Disabled U.S. Veteran Owned Small Businesses

(6) Services Acquisition Reform Act (SARA)

Contractors on the Battlefield

- New Army Clause effective November 28, 2003
- Contractor acknowledges inherent danger and accepts risks associated with performance
- Must comply with Combatant Command orders- failure to comply will result in employees being removed from theater at contractor's expense

Contractors on the Battlefield (Continued)

- Contractor employees must pass security and medical requirements and have pre-deployment training
- Employees will not wear uniforms, but may wear NBC protective clothing
- Employees may be issued weapons, with approvals
- Employees may be required to coordinate in-country purchases of good and services

Bundling/Consolidation

- New SBA Rule Effective October 20, 2003
- Now applies to multiple award contracts and task/delivery orders under them
- Mandates coordination with Small Business Specialists

Bundling/Consolidation
(continued)

- Redefines "Bundling" or "Bundled Requirement" – refers to consolidation of two or more requirements into a solicitation where one award is contemplated that is likely to be "unsuitable" for award to a small business.
- Unsuitability may be due to:
  - Diversity, size or specialized nature of performance
  - Aggregate dollar amount
  - Geographical dispersion of performance sites
  - Combination of above

Provisional Award Fee Payments

- Effective Date: January 13, 2004, but may be used in earlier solicitations provided contract award is on or after January 13, 2004

- Requirements: Contractor must have prior successful evaluations and use will not diminish effectiveness of the incentive

Provisional Award Fee Payments (continued)

- Ceiling: 50% of award fee available during initial period; and may not exceed 80% of the previous rating times the current period's award fee pool
- Overpayments: must immediately be returned or credited

Bottom line: this changes the **timing** of award fee payments, **not** the underlying **entitlement**

Award fee must still be earned

Overpayment Rules

- Revised clauses, effective October 31, 2003
- Contractor now has affirmative duty to immediately notify Contracting Officer and request instructions
- Applies to overpayments and duplicate payments
- No unique penalty if not done, but failure to comply with contract requirement may be grounds for negative performance rating

Sole Source for Disabled U.S. Veteran Owned Small Business

- Authorized in “Veterans Benefits Act of 2003” (H.R.2297) – Signed into Law December 2003
- Up to $5 million for manufacturing or $3 million for everything else
- Also authorizes disabled U.S. Veteran owned small business set-asides
- Prices must be fair and reasonable
- JWOD preference still comes first

SARA

- Signed into Law November 24, 2003
- Requires Chief Acquisition Officers at Civilian Agencies
- Authorizes telecommuting for contractors
- Defines performance based service contracts up to $25 Million as commercial items

SARA
(Continued)

- Authorizes time and materials and labor hour contract types for commercial services buys, provided the services are sold to the public using that type of contract, and the procurement is accomplished through competition
- Requires contracts supporting IRAQI reconstruction that use other than full and open competition to publish information in the CBD about how the award was made as well as the J&A